IN THE HIGH COURT OF PUNJAB AND HARYANA, AT CHANDIGARH

RSA No. 5325 of 2016 (O&M)
Date of Decision: 07.10.2016

Hare Kishan and others

......Appellants

Vs.

Raghbir Singh and another

.........Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Sandeep Goyal, Advocate,
for the appellants.

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AMOL RATTAN SINGH, J.

This is the second appeal of the defendants after the suit filed by respondent no.1 (hereinafter to be referred to as the plaintiff), seeking possession of the suit property by way of specific performance of the agreement to sell, entered into between the parties, was decreed in his favour by the learned Civil Judge (Junior Division), Palwal, and the first appeal filed by the appellants-defendants no.2 to 5 (hereinafter to be referred to as the appellants) was dismissed by the learned Additional District Judge, Palwal.

2. As per the suit set up by the plaintiff, it was stated that defendant no.1 (present respondent no.2), Brijwati (hereinafter to be referred to as respondent no.2), had entered into an agreement with the plaintiff to sell agricultural land to him as was fully described in the plaint, measuring 14 kanals 2 marlas, being a 1/7th share in a total land holding of 98 kanals 14 marlas, situated within the revenue estate of village Sondh, Tehsil Hodal,

District Faridabad.

The agreement is stated to have been executed on 30.05.2003 in the presence of witnesses, fixing a sale consideration of Rs.4,00,000/- in all, of which Rs.3,50,000/- was stated to have been paid by way of earnest money to respondent no.2 on the same date, with a separate receipt having been also issued to that effect.

The sale deed was to be executed on 31.08.2004, upon payment of the remaining sale consideration of Rs.50,000/-. It was also stipulated in the agreement that if the plaintiff failed to perform his part of the contract, then the earnest money would stand forfeited to respondent no.2 and in case she backed out of the contract, the plaintiff could get it enforced through a Court of law.

The suit land is stated to have been encumbered with the Gurgaon Gramin Bank, Sondh, at the time when the agreement was entered into.

3. The plaintiff further contended that in terms of the agreement, he reached the office of the Sub-Registrar on 31.08.2004, with the remaining sale consideration of Rs.50,000/-, alongwith the necessary amount for the purchase of stamp papers, but respondent no.2 did not turn up during office hours at the said office. Consequently, the plaintiff got an affidavit with regard to his presence attested from the Executive Magistrate.

Thus, it was contended in the plaint that the plaintiff had always been ready and willing to perform his part of the contract but it had come to his notice that respondent no.2 had execued a "sham sale deed" on 29.07.2004, in favour of the present appellants, who are actually her brothers' sons. Further, it was stated that the sale deed had been executed through the brother of respondent no.2, one Nathi, in whose favour she had executed a general power of attorney after the date of the agreement between her and the plaintiff.

It was still further contended that the appellants and their father had complete knowledge of the agreement between the plaintiff and respondent no.2 and as a matter of fact, the sale deed set up by them was without any consideration having been passed.

Consequently, it was contended that the sale deed actually being a sham transaction, the plaintiff had a right to get the agreement in question enforced against the appellants.

4. Upon notice issued to the defendants, respondent no.2 (defendant no.1) filed her written statement taking the usual preliminary objections and on merits submitting that she had not executed any agreement with the plaintiff and in fact, that she had obtained a loan of Rs.3,50,000/- from him, and on the date that the loan was taken, the plaintiff had obtained her thumb impression on several blank papers.

It was therefore contended that it was highly possible that he may have thereafter "procured an agreement to sell and receipts of those blank papers".

The relationship between her and the appellants was admitted but it was further stated by respondent no.2-defendant no.1, that she had not executed any sale deed in favour of the appellants and if any such sale deed had been set up, it was "false and fictitious" because Nathi had no right to execute any such sale deed on her behalf in favour of his sons.

5. The appellants (defendants no.2 to 5) also filed a written statement taking the customary preliminary objections, further stating that in

fact the agreement to sell dated 30.05.2003 in favour of the plaintiff was an "illegal document", as respondent no.2 had already executed a general power of attorney in favour of their father, Nathi, qua the suit land and had in fact, received sale consideration from him allowing him to alienate it to any other person, in any manner.

It was further stated that respondent no.2 Brijwati, as also Kela Devi, Sumitra and Mukesh, being co-owners to the extent of a 4/7th share in the land measuring 98 kanals 14 marlas, had appointed their attorney on 20.06.1986. They had also received a sale consideration of Rs.4,00,000/- on 26.06.1986 and had consequently relinquished their right, title and interest in the suit land.

Yet further, it was contended that if any loan of Rs.3,50,000/- had been received by respondent no.2 from the plaintiff, it was at the plaintiffs' own risk as he had made "no due and bonafide inquiry" with regard to the general power of attorney; hence, he was bound to suffer the consequences thereof.

6. It is recorded in the jugment of the learned Civil Judge that after filing her written statement, respondent no.2 (defendant no.1) was proceeded against *ex parte,* vide an order dated 26.10.2009.

Thereafter, the following issues were framed by the learned Court:-

> "1. Whether plaintiff is entitled to the specific performance of agreement to sell dated 30.05.2003? OPP
>
> 2. Whether the plaintiff is entitled to the possession of the suit property? OPP
>
> 3. Whether the plaintiff has no locus standi to file the present suit? OPD

4. Whether the agreement to sell is not enforceable? OPD

5. Whether the suit is filed in collusion with plaintiff and defendant no.1 as alleged? OPD

6. Relief."

7. The plaintiff examined Bir Singh Tewatia as PW1, Amar Chand as PW2, himself as PW3 and Ombir Singh Chechi, Advocate, as PW4, as witnesses in his favour and tendered the following documentary evidence:-

"i)	Ex.P1	Agreement to sell dated 30.05.2003
ii)	Ex.P2	Receipt dated 30.05.2003
iii)	Ex.P3	Affidavit of plaintiff dated 31.08.2004
iv)	Ex.P4	Mutation no.7807
v)	Ex.P5	Mutation no.7616
vi)	Ex.P6	Mutation no.6842
vii)	Ex.P7	*Jamabandi* for the year 1997-98
viii)	Ex.P8	Sale deed dated 29.07.2004."

The defendants examined Bhagwan Singh as DW1, Ganga Ram Vasika Navis as DW2, Nawal Singh, Advocate, as DW3, Sumitra as DW4 and Nathi as DW5 and also tendeed the following documents by way of evidence:-

"i)	Ex.D1	GPA dated 20.06.1986
ii)	Ex.D2	Receipt dated 26.06.1986
iii)	Ex.D3	Sale deed dated 29.07.2004"

8. The learned Civil Judge first examined the issue whether respondent no. 1 was competent to execute any agreement qua the suit land in favour of the plaintiff despite the fact that she had appointed her brother as

her attorney in the year 1986. It was found that indeed the first respondent, Brijwati, along with her sisters, Kela Devi, Sumitra and Mukesh had appointed their brother, Nathi, as their attorney by way of an instrument of General Power of Attorney, executed on 20.06.1986, which was a registered document.

Thereafter, Nathi had sold the property to his sons on 29.07.2004 (18 years later). That learned court came to a conclusion on this issue that simply because a person appoints another as his attorney, it would not mean that such person, i.e. the owner of the property or the principal who has executed the power of attorney, cannot enter into a transaction himself/herself qua the suit property.

It was further held that a General Power of Attorney executed only delegates powers to deal with the property in question but does not imply that the owner thereof has relinquished his or her own rights in the property.

It was further recorded by the learned Civil Judge that in any case, the defendants had not tendered any evidence in rebuttal to the contention of the counsel of the plaintiff that respondent no. 1 had no power to execute an agreement to sell.

9. It was found that a total of Rs. 4,00,000/- was received by Brijwati and her sister from their brother as per a receipt (Ex. D2), which was an unregistered document. However, it was held that any transaction of property for a value of above Rs. 100/- requires the instrument by which such transfer was effected, to be registered; however, even though a power of attorney was executed by respondent no. 2 in favour of the father of the appellants, i.e. in favour of her brother, no document transferring the

property to the brother was registered.

It was further held that even respondent no. 2, Brijwati, did not step into the witness box to corroborate the stand of the present appellants and in fact in her written statement she had denined the stand taken by the other defendants, i.e. her nephews, the present appellants.

Yet further, it was found that though one Jagdish was a witness to the execution of the receipt of Rs. 4,00,000/- (Ex. D-2), even he had not been examined and though DW-3 Sumitra, (i.e. one of the sisters of respondent no. 2 and Nathi), had been examined, she had pleaded ignorance about the said document.

Thereafter, despite first having recorded that Rs. 4,00,000/- had been received by the sisters from their brother, as per Ex. D-2, it was eventually held by the Civil Judge that the said document had not been proved by the defendants.

10. On the issue of whether or not the agreement dated 30.05.2003 was a valid document or not, it was found that as per the deposition of witnesses, an amount of Rs. 3,50,000/- was paid to respondent no. 1 by the plaintiff on the above said date, as PW-1 had deposed that the agreement was got typed by him on the instructions of respondent no. 2. Similarly, PW2 Amarchand had also specifically stated that at the time when the agreement was executed, he was present, along with another witness, both of whom had appended their signatures on the document and that the date fixed for execution of the sale deed, was 31.08.2004.

(Note:- The judgment of the lower court records that PW-2-Amarchand and Raghbir Singh, both attesting witnesses, specifically stated that they were present at the time when the agreement was executed.

However, Raghbir Singh is seen to be the plaintiff and there is no other Raghbir Singh seen to have appeared as a witness for the plaintiff. Therefore, obviously the mention of the name in the context of being a witness to the agreement, is an error in the judgment).

It was further held to be proved, on the basis of the affidavit of the plaintiff, that he had gone to the Tehsil office on the date fixed to get the sale deed executed but respondent no. 2 had not turned up (which the said respondent-defendant did not deny, not having testified and having been proceeded against *ex parte*).

11. Thus, holding that the agreement dated 30.05.2003 entered into between the plaintiff and respondent no. 1 had been proved, further holding on the other hand, that no evidence had been led by the defendants to prove the sale deed executed by Nathi in favour of the present appellants-defendants no. 2 to 5, it was further found that the present appellants were minors at the time of execution of the sale deed and therefore, it was held to be presumed that the transaction was without any consideration.

12. Eventually therefore, holding that with the agreement in favour of the plaintiff having been proved and the sale deed in favour of the defendants, (which in any case was executed after the date of the agreement), being without consideration and not having been proved, the plaintiff was held to have had locus to enter into the contract.

On the aforesaid finding, the suit of the plaintiff was decreed in his favour by the learned Civil Judge.

13. The present appellants filed a first appeal before the learned Additional District Judge, Palwal, against that judgment and decree. That Court, after noticing the facts and the evidence led, also found that though

Ex. D-2 showed that respondent no. 1 and her sisters had received an amount of Rs. 4,00,000/- from their brother on 20.06.1986 and that the "alleged GPA" was executed with the intention of irrevocable execution of the document and in fact, Brijwati and her sisters had relinquished their rights to the property in another case, by executing the said GPA (as recorded in para 14 of the judgment), however, as neither respondent no. 2 testified in favour of the defendants, nor any of the attesting witnesses thereto had appeared in the Court, the same finding with regard to DW-3, Sumitra, as was recorded by the lower court, was also recorded by the first appellate court, to the effect that this witness had expressed her ignorance about the document.

14. On the validity of the agreement in favour of the plaintiff, the same finding was recorded, on the same basis, by the learned first appellate court also, though in a very summary manner.

Consequently, the first appeal filed by the present appellants was also dismissed.

15. Now before this Court, learned counsel for the appellant has submitted that as per the receipt, Ex. D-2, it was shown that the sisters of the father of the appellants, had accepted Rs. 1,00,000/- each, i.e. Rs. 4,00,000/- in all, in exchange of the power of attorney that they had executed in favour of their brother, i.e. the father of the appellant, namely Nathi, in the year 1986, which showed that it was actually a sale transaction, or that they had relinquished their title to the suit land and as such, the courts below have wholly erred in not accepting that fact.

Having hearing learned counsel for the appellant, I find myself unable to accept the said contention because, firstly, it has been held by the Courts below that even the receipt, Ex. D-2, could not be fully proved, in view of the fact that one of the other sisters who is stated to have executed the power of attorney, claimed ignorance about the payment of money, to which learned counsel submits that the testimony of the said sister, DW4 Sumitra, actually is to the effect that Rs. 4,00,000/- were given to her and her sister jointly and that Exs. D1 and D2 were so executed. He therefore submits that the Courts below have wholly erred in interpreting the testimony of DW4.

16. Though in the aforesaid circumstances, the matter otherwise would have been required to be looked at differently, as in that case, the finding of the courts below would be seen to be completely perverse, being against the sworn testimony of a witness; however, in the opinion of this Court, even if such testimony is found to be as per the contention of the learned counsel, that eventually would make no difference to the rights of the respondent-plaintiff.

This would be so, in view of the fact that even such admission by one of the sisters of the father of the appellants-defendants, would not authenticate a transfer of propery for a value of above Rs. 100/-, in the absence of registration of any document showing such transfer, in terms of Section 17 (b) of the Indian Registration Act, 1908. Thus, though such admission (if it is found to be so), may amount to an admission of one sister as regards relinquishment of her share in the property, the fact remains that no attesting witness to even the receipt of Rs. 4,00,000/- was examined and respondent no. 1, i.e. the sister who had actually executed the agreement qua the suit land in favour of the plaintiff, did not admit to any such transaction between her and her brother in her written statement. Similarly, neither of the two remaining sisters were also examined by the appellants-defendants to testify in favour of the relinquishment of their rights in the suit property, by all sisters, including respondent no. 2.

Hence, in the aforesaid circumstances, and with a bar on reading into evidence any document of transfer of property which document is compulsorily required to be registered but is not so registered, and the attesting witness thereto also not appearing to testify in respect of the receipt of Rs. 4,00,000/- in 1986 by respondent no. 2 and her sisters (Ex. D-1), no such transfer of the suit property by respondent no. 1 in favour of the father of the present appellants, can be stated to have been proved.

17. As regards the execution of the registered power of attorney (Ex. D-1), though that was found to be a registered document, I find myself unable to interfere with the finding of the courts below to the effect that exercising a power of attorney by the principal, in favour of her/his attorney, would not extinguish the right of the principal herself/himself to dispose of her/his property, in addition to the attorney having been authorized to do so.

In this regard, Section 207 of the Indian Contract Act, 1872, needs to be referred to, which reads as follows:-

> **"207. Revocation and renunciation may be expressed or implied.-** Revocation or renunciation may be expressed or may be implied in the conduct of that principal or agent respectively.
>
> *Illustration*
>
> *A* empowers *B* to let *A's* house. Afterwards *A* lets it himself. This is an implied revocation of *B's* authority."

Thus, as a matter of fact, in the present case, with respondent no.1 having herself executed an agreement to sell the property in respect of which she had issued a power of attorney to her brother, before the brother had acted upon that power of attorney to transfer the property, the power of attorney actually stood extinguished. Though, if the power of attorney was irrevocable, then the attorney may have questioned the termination of his right, but firstly of course, it is seen that Nathi himself never questioned the action of his sister, i.e. respondent no.2; it is only his sons, the present appellants, who challenged the agreement entered into by her with respondent no.1. Other than that, the transfer itself by Nathi himself in favour of his sons, i.e. the appellant, is not seen to be a wholly bonafide transfer which will be dealt with presently.

Of course, it may have been a wholly different matter if the attorney had executed a *bona fide* sale deed prior to the agreement entered into by the plaintiff with respondent no. 1 herein. In such a case, the attorney, if having acted *bona fide,* would have validly made a transfer standing in the shoes of the principal and thus the principal would be unable to transfer the same land to another person. However, that is not the case presently, with the plaintiff and respondent no. 1 having been proved to have entered into an agreement for sale/purchase of the suit property on 30.05.2003, whereas the sale deed executed by the father of the appellants, in favour of the appellants, (which also was not duly proved), was stated to have been executed on 29.07.2004. Obviously, the subsequent sale deed, even if it had been proved, was only a backlash or a defence mechanism to counter the agreement between the plaintiff and respondent no. 1.

18. This would be other than the fact that an attorney executing a sale deed in favour of his sons would otherwise also be prohibited to do so, in the opinion of this Court, under Section 216 of the Indian Contract Act, 1872, even though the bar contained in that provision is with regard to

benefit to the agent on his own account, in the business of the agency. However, transfer of the property of the principal, in favour of the sons of the agent, with the principal specifically repudiating/denying such transaction, the transaction would be prohibited under Section 215 in the opinion of this Court.

Therefore, the agreement entered into by respondent no. 2 with the plaintiff, prior to the sale deed executed by her attorney in favour of his sons, would override such sale deed.

19. Finally, it is further seen that this appeal has also been filed after a delay of 3 years and 228 days, i.e. almost after four years. Though learned counsel has submitted that the delay has occurred because the counsel to whom the papers were entrusted by the appellants did not file the appeal for that long a time, even though the Court fee is stated to have been purchased on time by the appellants, however, as this Court has not agreed with the contention raised by learned counsel for the appellants even on merits, I also see no reason to entertain the application (CM No. 13853-C-2016), for condonation of such a long delay in filing the appeal.

Consequently, finding no merit in the appeal, it is dismissed *in limine,* on grounds of limitation, as also on merits.

(AMOL RATTAN SINGH)
JUDGE

October 07, 2016
nitin/dinesh

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No.